on the sprinkled street, and that this is a special benefit for which special assessments may be lawfully levied, and on these grounds such assessments have been sustained in several states.[10]

Liability of Public Agent for Injury to Property Rights. — There is some confusion as to the extent to which a defendant entering into transactions in some special character may be held liable personally for claims arising out of such transactions. An interesting phase of this problem is seen in cases where damage is caused to third persons by a public agent acting under a statute enumerating a certain class of contracts on which he may sue and be sued, and an action not included in this enumeration is brought against the agent for a claim based upon a transaction arising within the course of his employment. Of such a kind is a recent case in which a bankrupt had made payments to certain township trustees intending to prefer the township and the assignee in bankruptcy sought to recover these payments, although such a suit was not one of those enumerated in the statute authorizing the trustees to be sued. *Painter* v. *Napoleon Township*,[1] 156 Fed. 289 (Dist. Ct., N. D. Oh.). The opinion of the court that he should recover such payments is correct, because the defendants were not entitled to priority under the National Bankruptcy Act, and a state statute cannot relieve from liability under a national act.[2] But the case suggests the more difficult question of the trustees' liability when the statute restricting it is not overridden by a national act — a situation that, in the case of a preference, can arise today only where the former statute is federal.

If a private agent of a creditor knowingly receives a preference from a bankrupt, the assignee can recover it from the agent.[3] This is said to rest on the theory that where an agent receives money which the law prohibits him from taking, there is a sort of tortious misdealing with property to which the fact of the agency is no defense. It has been said, however, that a public agent is not liable for injuries to property rights,[4] in that, while he is acting as a public agent, his identity as an ordinary person is merged in his special character, and where the latter is created by statute, liability is restricted to the kind of actions enumerated in the statute. The answer to this reasoning is that the term agent, trustee, or public agent is descriptive and not inherent. A, public agent, is still A, individual. It is a fiction to say that while he is the former he is not the latter. If the agent's negligent acts have caused loss to the plaintiff, or if he has received the plaintiff's property from another, knowing that his principal is being illegally favored and the plaintiff defrauded, he has injured the plaintiff, and should therefore make restitution.[5] This principle is well brought out in a case where the plaintiff paid a sum of money to the defendants, parish-officers, under an illegal contract to indemnify the parish against certain claims. The defend-

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[10] Sears *v.* Boston, 173 Mass. 71; State *v.* Reis, 38 Minn. 371.

[1] A demurrer to the bill was sustained on other grounds.

[2] *In re* Debs, 158 U. S. 564, 579; U. S. Const., Art. VI.

[3] Larkin *v.* Hapgood, 56 Vt. 597; Perkins *v.* Smith, 1 Wils. 328.

[4] Jacobs *v.* Hamilton County, Fed. Cas. No. 7161; Feeholders of Sussex *v.* Strader, 18 N. J. L. 108. *Cf.* Commissioners of Hamilton County *v.* Mighels, 7 Oh. St. 109. *Contra*, Mitchell *v.* Harmony, 13 How. (U. S.) 115; Head *v.* Porter, 48 Fed. 481. And *cf.* May *v* Board of Commissioners, 30 Fed. 250.

[5] *Cf.* Berghoff *v.* McDonald, 87 Ind. 549. *Contra*, Carey *v.* Bright, 58 Pa. St. 70.

ants went out of office and paid the money over to their successors. The claims against the parish were void, and the court allowed a recovery, holding that the defendants could not shield themselves behind their official position.[6] The cases of a private agent and of a public agent not expressly relieved from liability should be governed by the same principle as to their liability in their individual capacity.[7] In the present case the statute might be interpreted as giving freedom from liability only in actions of contract not enumerated. It would still more clearly afford no protection from individual liability for tortious misdealing with the property of others.

The Act of an Administrative Officer as Original Corporate Action. — "A corporation can dô nothing but by attorney."[1] Such a declaration comes readily enough from lawyers who have the conception that a corporation is a metaphysical being created by law, with none of the attributes of personality except the power to hold property and to do business through agents. Under the pressure of modern analysis this fiction tends to yield to more rational ideas, and corporate action is perceived more truly as simple group action.[2] But even though the body of associates is itself looked upon as the corporation rather than as the guardian of a fictitious "legal being," the fact remains that all corporate action which is not performed directly by the representative members of the group must be done through the medium of agents to whom the associates have given authority to act. Thus, under either theory as to the nature of a corporation, administrative officers can exercise only a delegated authority. A new theory of corporateness must be devised to meet a recent decision of the New Jersey Court of Errors and Appeals in which it was held that the execution of an affidavit by the vice-president of a corporation was corporate action *per se* and not *per alium*. *American Soda Fountain Co.* v. *Stolzenbach*, 68 Atl. 1078.[3]

For many centuries before the time of Lord Coke it was the habit of scholars to draw analogies between social institutions and the human body. As the "body in Christ" and the "body politic" were pictured with many fanciful details, so too was that lesser institution, the corporation.[4] At one time this analogy found a place in English law. It was said that a body without a head is incomplete and cannot act.[5] If, therefore, the lands of a monastery which was temporarily without an abbot should be disseised by one who died before a new abbot was appointed, still the new abbot could enter on the heir of the disseisor, for the corporation was headless and there was no person who could make continual claim.[6] It was even held that a bond between the Mayor of Newcastle and the Mayor and Commonalty of

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6 Townson *v.* Wilson, 1 Camp. 396. The rule of *in pari delicto* was not enforced because the plaintiff was under duress at the time of the contract and payment.

7 *Cf. In re* Johnson, 15 Ch. Div. 548.

1 See 3 Comyns's Digest, 405.

2 See Freund, The Legal Nature of Corporations, 7 *et seq.*; 1 Kyd, Law of Corporations, 15, 16. *Cf.* Liverpool Ins. Co. *v.* Massachusetts, 10 Wall. (U. S.) 566.

3 Bank of Toronto *v.* McDougall, 15 U. C. C. P. 475.

4 See 1 Pollock and Maitland, History of English Law, 489 *et seq.*; Gierke, Political Theories of the Middle Ages, 22.

5 See Carr, Corporations, 154, n. 1.

6 See Co. Lit. 263 *b*.